TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1597.

HENRY JONES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED APRIL 1, 1890.

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1 UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the district of Maryland, begun and held at the court-house in the city of Baltimore, on the first Monday of November, being the fourth day of the same month, in the year of our Lord one thousand eight hundred and eighty-nine.

Present, the honorable Hugh L. Bond, circuit judge; Thomas J. Morris, judge, Maryland district; Thomas G. Hayes, esquire, attorney; George H. Cairnes, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

THE UNITED STATES
vs.
HENRY JONES.

Be it remembered that at a district court of the United States for the district of Maryland, begun and held on the first Tuesday of September, in the year of our Lord one thousand eight hundred and eighty-nine, John R. Kelso, jr., Ross T. Pennington, George F. Wise, James H. Downs, Thomas J. Tongue, Arthur R. Maclellan, George E. Schreck, William P. Towles, George F. Nichols, James F. Wagner, Robert Calder, Walter G. Smith, George Reis, Ernest H. Dryden, William C. Spencer,
2 Randolph Teawalt, Alexander L. Boggs, jr., Harrison Scott, and Albert Shriver, good and lawful men of the district aforesaid, who, being empanelled, sworn, and charged to inquire for the United States of America for the body of the district aforesaid, having withdrawn from the bar of the court, afterwards return and present to the said court an indictment in form following, to wit:

UNITED STATES OF AMERICA,
District of Maryland:

In the district court of the United States in and for the district of Maryland.

The grand inquest of the United States of America, in and for the district of Maryland, inquiring for the body of said district, do on their oath present, that Henry Jones and Cæsar Fisher, late of said district, yeoman, heretofore, on the 14th day of September, in the year eighteen hundred and eighty-nine, at Navassa Island, a place which then and there was under the sole and exclusive jurisdiction of the United States and out of the jurisdiction of any particular State or district of the United States, the same being, at the time of the committing of the offenses in the manner and form as hereinafter stated by the persons hereinafter named, an island situated in the Caribbean Sea, and named Navassa Island, and which was, then and there, recognized and considered by the United States as containing a deposit of guano within the meaning and terms of the laws of
3 the United States relating to such islands, and which was then and there recognized and considered by the United States as appertaining to the United States, and which was also, then and there, in

the possession of the United States, under the laws of the United States, then and there, in force relating to such islands; in and upon one Thomas N. Foster feloniously, wilfully, and of their malice aforethought did make an assault, and that the said Henry Jones and Cæsar Fisher, with a certain axe and stone, which said axe the said Henry Jones had and held in both of his hands, and which said stone the said Cæsar Fisher had and held in his right hand, the said Thomas N. Foster in and upon the belly and back part of the body with said axe, and upon the back part of the head with said stone of him, the said Thomas N. Foster, then and there, feloniously, wilfully, and of their malice aforethought, did strike, giving unto him, the said Thomas N. Foster, then and there, with the said axe and stone by the strokes aforesaid, in manner aforesaid, in and upon the belly and back part of the body with said axe and the back part of the head with said stone of him, the said Thomas N. Foster, three mortal wounds, of which said mortal wounds he, the said Thomas N. Foster, on the said 14th day of September, in the year of our Lord eighteen hundred and eighty-nine, at Navassa Island aforesaid, did languish and languishing did live, on which same 14th day of September, in the year of our Lord eighteen hundred and eighty-nine aforesaid, at Navassa Island aforesaid, he, the said Thomas N. Foster, of the said mortal wounds died.

And so the grand inquest aforesaid, on their oath aforesaid, do say that the said Henry Jones and Cæsar Fisher, him, the said Thomas N.
4 Foster in manner and form aforesaid, and by the means aforesaid feloniously, willfully, and of their malice aforethought did kill and murder.

And the grand inquest aforesaid, on their oath aforesaid, do further present that George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles H. Smith, otherwise called "John Ward," James H. Robinson, otherwise called "Snow", James Philips, Edmund Francis, otherwise called "Blueball," James Johnson, otherwise called Thomas Welsh, Alfred Brown, Moses Williams, otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called "Juggler," and Amos Lee, late of said district, yeomen, on the day and year aforesaid, at the Navassa Island aforesaid, feloniously were present, aiding, abetting, and assisting the said Henry Jones and Caesar Fisher the felony and murder aforesaid to do and commit.

And the grand inquest aforesaid, on their oath aforesaid, do further present that the said district of Maryland was the district of the United States into which the said Henry Jones, Caesar Fisher, George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles H. Smith, otherwise called "John Ward," James H. Robinson, otherwise called "Snow," James Philips, Edmund Francis, otherwise called "Blueball," James Johnson, otherwise called Thomas Welsh, Alfred Brown, Moses Williams, otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called "Juggler," and Amos Lee,
5 after committing the felony and murder aforesaid in manner and form as aforesaid, at Navassa Island aforesaid, on the day and year aforesaid, were first brought from the said island of Navassa. Contrary to the statutes of the United States in such case made and provided, and against the peace, Government, and dignity of the United States.

And the grand inquest aforesaid, on their oath aforesaid, do further present that Henry Jones and Cæsar Fisher, late of said district, heretofore on the 14th day of September, in the year of our Lord one hundred and eighty-nine, at Navassa Island, a place which, then and there was under the sole and exclusive jurisdiction of the United States and out of the jurisdiction of any particular State or district of the United States, the same being, at the time of the committing of the offences, in manner and form as hereinafter stated by the persons hereinafter named, and duly situated in the Caribbean Sea, and named and known as Navassa Island, which said island was, then and there, recognised and considered by the United States as containing a deposit of guano within the meaning and terms of the laws of the United States relating to such islands, and then and there recognised and considered by the United States as appertaining to the United States, and in the possession of the United States under the provisions of the laws of the United States made

6 and provided, and then and there in force with regard to such islands, in and upon one Thomas N. Foster feloniously, wilfully, and of their malice aforethought did make an assault, and that the said Henry Jones and Cæsar Fisher with a certain axe and stone, which said axe the said Henry Jones had and held in both of his hands, and which said stone the said Cæsar Fisher had and held in his right hand, the said Thomas N. Foster in and upon the belly, and back part of the body with said axe, and upon the back part of the head with said stone, of him the said Thomas N. Foster, then and there, feloniously, wilfully, and of their malice aforethought did strike, giving unto him, the said Thomas N. Foster, then and there, with the said axe and stone by the persons aforesaid, in manner aforesaid, in and upon the belly and back part of the body with said axe, and on the back part of the head with said stone, of him, the said Thomas N. Foster, three mortal wounds, of which said mortal wounds he, the said Thomas N. Foster, on the said 14th day of September, in the year of our Lord eighteen hundred and eighty-nine aforesaid, at Navassa Island aforesaid, did languish, and languishing did live, on which said 14th day of September, in the year of our Lord eighteen hundred and eighty-nine aforesaid, at Navassa Island aforesaid, he, the said Thomas N. Foster, of the said mortal wounds died.

And so the grand inquest aforesaid, on their oath aforesaid, do say that the said Henry Jones and Cæsar Fisher him, the said Thomas N. Foster, in manner and form aforesaid, and by the means aforesaid, feloniously, wilfully, and of their malice aforethought did kill and murder.

7 And the grand inquest aforesaid, on their oath aforesaid, do further present that the said district of Maryland was the district into which the said Henry Jones and Cæsar Fisher, after committing the murder aforesaid, in the manner and form aforesaid, at Navassa Island aforesaid, were first brought from the said Navassa Island.

And the grand inquest aforesaid, on their oath aforesaid, do further present that George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles H. Smith, otherwise called "John Ward," James H. Robinson, otherwise called "Snow," James Philips, Edmund Francis, otherwise called "Blueball," James Johnson, otherwise called Thomas Welsh,

Alfred Brown, Moses Williams, otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called "Juggler," and Amos Lee, late of said district, yeomen, before the said felony and murder was committed by the said Henry Jones and Cæsar Fisher, in the manner and form aforesaid, to wit, on the 14th day of September, in the year of our Lord eighteen hundred and eighty-nine, at Navassa Island, a place which, then and there, was under the sole and exclusive jurisdiction of the United States, and out of the jurisdiction of any particular State or district of the United States, the same being, at the time of the committing of the offenses, in manner and form as hereinafter stated by the persons hereinafter named, an island situated in the Caribbean Sea, and named and known as Navassa Island, which said island was, then and there, recognized and considered by the United States as containing a deposit of guano, within the meaning and terms of the laws of the
8 United States relating to such islands, and then and there recognized and considered by the United States as appertaining to the United States and in the possession of the United States, under the provisions of the laws of the United States made and provided, and, then and there in force, with regard to such islands, did feloniously, wilfully, knowingly, and maliciously aid, abet, cause, procure, command, and counsel said Henry Jones and Cæsar Fisher to do and commit the said felony and murder in manner and form aforesaid.

And the grand inquest aforesaid, on their oath aforesaid, do further present that the said district of Maryland was the district of the United States into which the said George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles H. Smith, otherwise called John Ward, James H. Robinson, otherwise called "Snow," James Philips, Edmund Francis, otherwise called "Blueball," James Johnson, otherwise called Thomas Welsh, Alfred Brown, Moses Williams, otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called 'Juggler," and Amos Lee after feloniously, wilfully, knowingly, and maliciously aiding, abetting, causing, procuring, commanding, and counseling the said Henry Jones and Cæsar Fisher to do and commit the said felony and murder in manner and form aforesaid, at Navassa Island aforesaid, on the day and year aforesaid, were first brought from the said island of Navassa contrary to the statutes of the United States in
9 such case made and provided, and against the peace, government, and dignity of the United States.

THOMAS G. HAYES,
Attorney of the United States for the District of Maryland.

Which said indictment is endorsed as follows, to wit: "A true bill, John R. Kelso, jr., foreman."

Bench warrant.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal of the Maryland district, greeting:

We command you that you apprehend Henry Jones and Cæsar Fisher, George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles

H. Smith, otherwise called John Ward, James H. Robinson, otherwise called "Snow," James Philips, Edmund Francis, otherwise called "Blueball," James Johnson, otherwise called Thomas Welsh, Alfred Brown, Moses Williams, otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called "Juggler," and Albert Lee, and them immediately have before the district court of the United States for the Maryland district to answer unto an indictment for that they did on the 14th day of September, A. D. 1889, at Navassa Island, murder one James Mahon contrary to the form of the statute in such case made and provided, and against the peace, government, and dignity of the United States. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the honorable Thomas J. Morris, judge of our said district court, this 14 day of November, in the year eighteen hundred and eighty-nine.

Issue Nov. 14, 1889.

[SEAL.]

JAS. W. CHEW,
Clerk Dist. Ct. U. S.

Marshal's return.

"Cepi omnes, Geo. H. Cairnes, U. S. marshal."

Order remitting case to circuit court.—Filed November 14th, 1889.

THE UNITED STATES
vs.
HENRY JONES, CAESAR FISHER, AND OTHERS.

In the district court of the United States for the district of Maryland.—September term, 1889.

On motion of the attorney of the United States for the Maryland district—

It is by the court this 14th day of November, A. D. 1889, ordered that the indictment and all the proceedings in this case be remitted to the circuit court of the United States for the fourth circuit in and
11 for the Maryland district at a session to be held on the 15th day of November, A. D. 1889, in pursuance of the 1039 section of the Revised Statute' of the United States, and that this order be entered on the minutes of the court.

THOMAS J. MORRIS,
District Judge.

Whereupon the said indictment, process, and proceedings of the said district court are remitted to the circuit court here in pursuance of section 1039 of the Revised Statutes of the United States.

And thereupon the said Henry Jones, Caesar Fisher, George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles H. Smith, otherwise called "John Ward," James H. Robinson, otherwise called "Snow," James Philips, Edmund Francis, otherwise called "Blueball," James Johnson, otherwise called Thomas Welsh, Alfred Brown, Moses Williams,

otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called "Juggler," and Amos Lee come to the bar of the court here, in their proper persons, under the custody of the marshal of the said district, and by their counsel file in court here a demurrer to the said indictment in the words following, to wit:

Demurrer.—Filed November 15, 1889.

THE UNITED STATES }
vs.
HENRY JONES ET AL. }

In the circuit court of the United States for the district of Maryland.—Indictment No. 2.—November term, 1889.

12 The defendants by their attorneys and counsel in their behalf and as advised by counsel, say that the indictment aforesaid in the cause aforesaid against them exhibited is bad in law, and they hereby demur thereto and say that by no matter or thing alleged therein are they in law obliged to plead to the same.

A. STIRLING.
JOS. S. DAVIS.
E. J. WARING.
J. E. STIRLING.

Whereupon, all and singular the premises being seen and by the court here fully understood, it is considered by the court here that the said indictment and the matters therein contained are sufficient, in law, to compel the said prisoners to answer thereto.

Arraignment and pleas.

And thereupon the said Henry Jones, Caesar Fisher, George S. Key, Alfred Jones, otherwise called "Texas Shorty," Charles H. Smith, otherwise called "John Ward," James H. Robinson, otherwise called "Snow," James Philips, Edmund Francis, otherwise called "Blueball," James Johnson otherwise called "Thomas Welsh," Alfred Brown, Moses Williams, otherwise called "Dakota," Edward Woodfork, Edward Smith, otherwise called "Devil," Charles H. Davis, Stephen Peters, James Tasker, Norman Wooster, otherwise called "Juggler," and Amos Lee, having had hearing of the said indictment, and forthwith being
13 demanded of each of them concerning the premises in the said indictment above specified and charged upon them how they will acquit themselves thereof, they each and separately say that they are not guilty thereof, and thereof for good and evil they put themselves upon the country; and the said Thomas G. Hayes, esquire, attorney of the United States for the district aforesaid, who in this behalf prosecuteth, doth the like.

Jury sworn.

Whereupon the panel of petit jurors, selected, drawn, and returned to the court here in pursuance of and in accordance with the statute in such

case made and provided, being called, come; whereupon certain of them, to wit, Albert K. Robins, Stephen D. McConkey, Elon [illegible], [illegible] J. Smith, Thaddeus Barton, Thomas J. Sterling, William [illegible], [illegible] R. King, Peter McDonald, Robert W. Hayes, George M. Addison, and George C. Addison, are sworn to say the truth in the premises.

Verdict.

And the said jurors so being empannelled and sworn to say the truth in the premises, upon their oath do say that the said Henry Jones is guilty of the murder aforesaid, in both of the counts in the indictment above charged and imposed upon him; that the said Caesar Fisher is not guilty of murder, but is guilty of manslaughter on the first count of the indictment and not guilty on the second count; that the said Alfred Jones alias "Texas Shorty," is not guilty of murder, but is guilty of manslaughter on the first count of the indictment, and not guilty on the second count; that the said Charles H. Smith, alias "John Ward," is not guilty of murder, but is guilty of manslaughter on the first count of the indictment and not guilty on the second count; that the said James Phillips is not guilty on both counts of the indictment; that the said Edmund Francis, alias "Blackball," is not guilty of murder, but is guilty of manslaughter on the first count of the indictment and not guilty on the second count; that the said James Johnson, alias "Thomas Welsh," is not guilty of murder, but is guilty of manslaughter on the first count of the indictment, and not guilty on the second count; that the said Alfred Brown is not guilty of murder, but is guilty of manslaughter on the first count of the indictment and not guilty on the second count; that the said Moses Williams, alias "Dakota," is not guilty on both counts of the indictment; that the said Edward Smith, alias "Devil," is not guilty of murder, but is guilty of manslaughter on the first count of the indictment and not guilty on the second count; that the said Amos Lee is not guilty of murder, but is guilty of manslaughter on the first count of the indictment and not guilty on the second count; and as to the other prisoners above charged with the murder aforesaid, the said jurors so empanelled and sworn as aforesaid, being unable to agree upon a verdict, are by the court here discharged from further consideration of the premises.

15 *Motion for new trial and in arrest of judgment.—Filed December 21, 1889.*

THE UNITED STATES
vs.
HENRY JONES, CAESAR FISHER, and others.

In the circuit court of the United States for the district of Maryland.

The defendants, other than those acquitted by the verdict, move the court here for a new trial and an arrest of judgment for the reasons as follows:

1. Because the verdict is against the evidence and the weight of the evidence.

2nd. Because the court erred in its instructions to the jury.

3rd. Because the court erred in not admitting the following evidence offered by the defendant: The proof that on the —— day of April, 1889, a day after the 20th day of April, 1889, a cargo of phosphate of lime was sold by the Navassa Phosphate Co., the persons in possession of said Navassa Island, and was taken from and loaded and shipped at and from said island in a British vessel, for the use of persons not citizens of the United States, nor residents therein; said phosphate of lime being the only product of said island, and the substance called guano, by the alleged
16 discoverer in his application under the act of August 18, 1856.

4th. Because the indictment is defective in this, that it alleges that said Navassa Island was, then and there, recognized and considered by the United States as containing a deposit of guano, within the meaning and terms of the laws of the United States relating to such islands, instead of alleging that the said island was a rock, island, or key, containing a deposit of guano, or which had contained a deposit of guano. In fact, said island never at any time did contain a deposit of guano, which was proved on the trial of the cause.

5th. Because the act of August 18, 1856, Ch. 164, now codified with amendments as Title 72 of the Revised Statutes of the United States is unconstitutional and void, and the court was without jurisdiction to try the defendants under the indictment found against them.

6th. Because it was proved on the trial of the case that the substance mined and sold by the Navassa Phosphate Co. was a mineral phosphate of lime enclosed in pockets in another species of rock, all of volcanic origin, constituted the whole substance and physical constitution of Navassa Island; and that said island never had contained a deposit of guano, and that the representations made to the Department of State in the papers filed by the alleged discoverer of said island, certified copies of which papers were offered in evidence in the cause, and which papers alleged that said island did contain a deposit of guano and was within the
17 meaning of the act of Aug. 18, 1856, Ch. 164, were wholly false and fraudulent, and the action of the Secretary of State thereon was obtained by such fraud and is wholly void.

ARCHIBALD STIRLING.
E. J. WARING.
JOS. S. DAVIS.
ROBT. P. GRAHAM.
JAMES D. COTTER.
J. EDW. STIRLING,
Counsel for Defendants.

Non. Pros as to other prisoners.

And thereupon, on the 15th day of February, 1890, upon the motion of the attorney for the United States, a non pros is entered as to George S. Key, James H. Robinson, alias "Snow," James Tasker, Stephen Peters, Charles H. Davis, Edward Woodfork, and Norman Wooster, alias "Juggler."

And thereupon, afterwards, on the 20th February, 1890, the motion for new trial and in arrest of judgment is by the court here overruled.

Judgment of death.

And thereupon, the said Henry Jones being brought to the bar of the court here, it is forthwith demanded of the said Henry Jones if he hath or knoweth anything to say, wherefore the court here ought not, upon the premises and verdict aforesaid, to proceed to judgment against him? Who nothing further saith, unless he before hath said.

Whereupon, all and singular the premises being seen, and by
18 the court here fully understood, it is therefore considered by the court here that the said Henry Jones be hanged by the neck until he be dead; that the marshal of this district, or one of his deputies, do cause execution to be done in the premises, on the 28th day of March next ensuing; that he be now taken hence to the Baltimore City jail, to be there or in some other safe and convenient place within this district safely kept until the day of execution, and from thence, on the day of execution appointed, he be taken to the place of execution, there to be hanged by the neck until he be dead.

Judgment of confinement in the penitentiary.

Therefore it is considered by the court here that the said Alfred Jones, alias "Texas Shorty," and Edmund Francis, alias "Blueball," do each undergo a confinement at hard labor in the Albany County Penitentiary, situated at Albany, in the State of New York, for the period of ten years, and that each of them do pay a fine of one hundred dollars; and that the said Charles H. Smith, alias "John Ward" and James Johnson, alias "Thomas Welsh," do each undergo a confinement at hard labor in the Albany County Penitentiary, situated at Albany, in the State of New York, for the period of five years, and that each of them do pay a fine of one hundred dollars; and that the said Alfred Brown and Amos Lee do each undergo a confinement at hard labor in the Albany County Penitentiary, situated at Albany, in the State of New York, for the period of two years; and that each of them do pay a fine of one hundred
19 dollars; and that the said Cæsar Fisher do undergo a confinement at hard labor in the Albany County Penitentiary, situated at Albany, in the State of New York, for the period of eight years, and that he pay a fine of one hundred dollars; and the said Alfred Jones, alias "Texas Shorty," Edmund Francis, alias "Blueball," Charles H. Smith, alias "John Ward," James Johnson, alias "Thomas Welsh," Alfred Brown, Amos Lee, and Cæsar Fisher, are committed to the custody of the marshal of this District to be by him, as soon as possible, safely removed to the penitentiary aforesaid, therein to be kept, &c.

Memorandum.

Verdict in this case was rendered on the 21st day of December, 1889, and judgment was rendered on the 20th day of February, 1890.

Before the jurors withdrew from the bar of the court here the said

Henry Jones, by his attorneys, filed in court here his bill of exceptions, which is as follows, to wit:

Bill of exceptions.

In the circuit court of the United States for the district of Maryland.

THE UNITED STATES
vs.
HENRY JONES.

Indictment for murder.

20 At the trial of this case before court and jury in the circuit court of the United States for the district of Maryland, the defendant, Henry Jones, before the jury had retired from the bar of the court, after their verdict, tendered to the court the following bill of exceptions:

The United States, to support the issues on their part, proved that the defendant, after the act for which he is indicted was committed, was first brought into the Maryland district as alleged in the indictment.

The United States further proved the killing of Thomas N. Foster by the defendant as charged in the indictment, and further proved that the island of Navassa, in said indictment mentioned was, at the time the offense was committed, in the possession of the Navassa Phosphate Company, incorporated by the State of New York, and which held the said island as the assignee of Peter Duncan and Edward K. Cooper, they being the persons referred to in the State Department papers offered in evidence and hereafter referred to and given in full.

The United States, to prove that the said Navassa Island was recognized and considered by the United States as appertaining to the United States, and in the possession of the United States under the provisions of the laws of the United States made and provided and then and there in force with regard to such islands, offered in evidence certified copies from the records of the State Department of the United States, the following papers:

No. 602.—United States of America.—Department of State.

21 To all to whom these presents shall come, greeting:

I certify that the document hereto annexed is a true copy from Senate Executive Document No. 37, 36th Congress, 1st session, filed in this Department with papere relating to the discovery of guano on the island of Navassa.

In testimony whereof I, James G. Blaine, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Wa hington this eleventh day of November, A. D. 1889, and of the Independence of the United States of America the one hundred and fourteenth.

[SEAL.] JAMES G. BLAINE.

To the honorable the Secretary of State of the United States:

Peter Duncan, a citizen of the United States, respectfully represents to the Department of State of the United States that, on the [illegible] July, in the year 1857, he did discover a deposit of guano on an island or key in the Caribbean Sea, not within the lawful jurisdiction of any government, and not occupied by the citizens of any other government, which said island or key is called Navassa, and lies in latitude 18° [illegible] north, longitude 75° west, forty-five miles or thereabouts from the island of St. Domingo, and seventy miles or thereabouts from the island of Jamaica. The said island of Navassa is about [illegible] miles in length and a mile and a half in width, apparently of volcanic origin, and elevated about three hundred feet above the surface of the sea, presenting a rocky, perpendicular cliff or shore on all sides, except a small space to the north. It is covered with small shrubs upon the surface, beneath which is a deposit of phosphatic guano varying in depth from one to six feet, and estimated in quantity at one million of tons.

And said claimant further represents that, on the 19th day of September, 1857, he did take peaceable possession of and occupy said island or key of Navassa in the name of the United States, and continues so to occupy the same, and is prepared to furnish satisfactory evidence thereof, and of all others the requisites and facts prescribed by the act of Congress in such case made and provided.

Wherefore he prays that said key or island of Navassa may be considered and declared as appertaining to the United States, and that he, the said claimant, may have the rights and advantages allowed and secured to him, as such discoverer, which are, by the act of Congress aforesaid, provided.

PETER DUNCAN.

Test:

JOHN HANAN,
United States Commissioner.

UNITED STATES OF AMERICA,
District of Maryland, sct.:

Be it remembered, and it is hereby certified, that on the [illegible] day of November, A. D. 1857, before the undersigned, a commissioner of the circuit court of the United States for the fourth circuit, in and for the district aforesaid, personally appeared Peter Duncan, and made oath on the Holy Evangely of Almighty God that the matters and things stated and set forth in the aforegoing claim are true.

JOHN HANAN,
United States Commissioner for Maryland.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Thomas Spicer, clerk of the circuit court of the United States for the fourth circuit, in and for the Maryland district, do hereby certify that John Hanan, esq., before whom the foregoing affidavit was made, was, at the time of taking the same, a commissioner duly appointed by the circuit court, pursuant to the act of Congress entitled, "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the

United States," and to all his acts as such full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court this seventeenth day of November in the year of our Lord one thousand eight hundred and fifty-seven.

[L. S.] THOMAS SPICER,
Clerk of the Circuit Court.

24 No. 593.—United States of America.—Department of State.

To all to whom these presents shall come, greeting:

I certify that the document hereto annexed is a copy of a proclamation issued by this Department on the 8th day of December, 1859, in respect to the discovery of guano on the island of Navassa, by Peter Duncan.

In testimony whereof I, James G. Blaine, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this fifth day of November, A. D. 1889, and of the Independence of the United States of America the one hundred and thirteenth.

[SEAL.] JAMES G. BLAINE.

Lewis Cass, Secretary of State of the United States. To all to whom these presents shall come, greeting:

Know ye, that Peter Duncan, a citizen of the United States, has filed in this Department, the required notice of the discovery of guano on and of the occupation of the island of Navassa, in the Caribbean Sea, in the name
25 of the United States of America, the same being in north latitude eighteen degrees and ten minutes, and in longitude seventy-five degrees west; and that Edward K. Cooper, also a citizen of the United States, and the assignee of the said Peter Duncan, has entered into sufficient bonds under and according to the provisions of the act of the Congress of the United States, passed on the eighteenth day of August, in the year eighteen hundred and fifty-six; wherefore the said Edward K. Cooper is entitled, in respect to the guano on the said island, to all the privileges and advantages intended by that act to be secured to citizens of the United States who may have discovered deposits of guano, provided always, that the said Edward K. Cooper shall abide by the conditions and requirements imposed by the act of Congress, aforesaid.

In witness whereof I, Lewis Cass, Secretary of State of the United States of America, have hereunto set my hand and caused the seal of the Department of State to be affixed at Washington this eighth day of December, 1859.

[SEAL.] LEW. CASS.

And that at the time of the commission of said act the persons on the island consisted of 137 colored laborers of said company, and 11 white officers or superintendents, all residents of the United States, appointed by the company, the laborers, including the defendant, being
26 employed in digging the phosphate or guano and transporting by railroad propelled by man-power and handling the phosphate or

guano found on the island and putting it on shipboard, which digging and mining is carried on by digging and blasting with dynamite and [illegible]ing with picks and other iron tools, and which phosphate or guano so mined is the article called Navassa phosphate in the market, and is the only substance on the island which is dug, mined, worked, transported or sold, the said laborers being shipped at Baltimore under a shipping article as follows:

27 NAVASSA PHOSPHATE COMPANY,
20 & 22 *South street, Baltimore.*

This agreement, made at Baltimore the 12th day of January, 1889, by and between the Navassa Phosphate Company, of the first part, and the undersigned laborers of the United States, of the second part, as follows: Said laborers agree to proceed, under the orders and instructions of said Navassa Phosphate Company, or their agents, on board such vessel as shall be provided for the purpose, to Navassa Island, for the business of assisting in loading of vessels with cargo, either by working on shore or in boats; and for this purpose the parties of the second part hereby covenant and agree to devote their whole time and services in such labor as they may be directed to do by said Navassa Phosphate Company, or their agents, and for as many months as the said Navassa Phosphate Company may desire, not exceeding in all fifteen months from the time of arriving at Navassa Island, until discharged therefrom, at which time their wages are to commence and cease. And the said Navassa Phosphate Company agrees on their part to pay said undersigned the monthly wages set opposite their respective names, and to furnish a free passage to and from said island of Navassa, and further to find said undersigned laborers in the usual provisions furnished to such laborers free of all expense to the parties of the second part.

Payment of wages to be made on the return of the parties of second part to Baltimore. And should they fail to obey the orders and instructions of said Navassa Phosphate Company, or their agents, or refuse at any time to labor, they shall forfeit all claim for wages and compensation which may be due them.

If said Navassa Phosphate Company fails to comply with this agreement on their part they shall forfeit the sum of twenty dollars in addition to full monthly wages and free passage to the parties of the second part to this contract. The parties of the second part further agree, in case of sickness or lost time, to pay the said Navassa Phosphate Company 50 cents per day board, and said Navassa Phosphate Company not to be liable for any wages or compensation for time lost by the parties of the second part by sickness or otherwise.

(Across the face in red ink:) The parties of the second part agree upon signing the contract to obey and abide by all the rules, regulations, and laws that may now be in operation or hereafter put in force on the island of Navassa, West Indies, for the better protection of life and property and that may be deemed necessary for police protection and discipline of the island, and release said Navassa Phosphate Company from any and all liability for any injury arising from accident, or from any acts of any officer or employee on the island of Navassa.

28 It is further understood and agreed to by the parties of the second part that, in case they are not competent to perform the

duties as herein stated, they to pay their passage back to the United States, and the parties of the first part not to be liable for any wages whatsoever. It is also understood that 50 cents per month shall be deducted from the wages of the parties of the second part for medicines and medical attention.

NAVASSA PHOSPHATE COMPANY,
Per JOHN H. HASKELL, for the Co.

In consideration to the foregoing, and the advance wages set opposite our names, the receipt whereof is hereby acknowledged, we have signed this contract, in duplicate, as witness our hands:

Signatures.	Monthly wages.	Advance paid.	Witness to signature and payment.	Age.	Place of birth.
No. 14. Henry Jones	$6.00	$10.00	4—1	23	Baltimore.
* * * * * *	* *	* *	* * *	* *	* * *

We hereby certify that we, the undersigned, were present on board the brig Romance, in the harbor of Baltimore, Md., when the above-named men acknowledged that they had signed the above contract, and that they were willing to go to Navassa Island, W. I., and obey all orders, rules, and regulations; that the advance set opposite their respective names was correct, and that they had received the money.

29

CHAS. BROWN, *Master*.
FRED'K ABBOTT, *Mate*.
JOHN W. PEED, *Shipper*.

BALTO., *January 12th*, 1889.

That on the 14th day of September, 1889, a riot took place, in which a large number of the laborers against the officers were engaged; on which day and under circumstances which the jury found amounted to murder, the defendant killed Thomas N. Foster, one of the officers, as charged in the indictment. The prisoner during the trial, after such proof by the United States, made an offer of proof from a witness then sworn and on the stand by call of the defendant, which proof is as follows, as the offer of it was made:

JOHN H. HASKELL, recalled.

(By Mr. STIRLING.) State whether you know, from the records of the company, that a vessel was loaded with this phosphate of lime at Navassa, after the 16th of April, 1889; the vessel being a foreign vessel, and the cargo being intended for the use of persons other than residents or citizens of the United States.

Mr. HAYES. Let it come in as it did before. Let the stenographer record the answer, and then I will move the court to strike it out as irrelevant. Of course, we object to the question.

The COURT. Let the witness answer the question and then I will strike it all out as immaterial.

30

A. A vessel was loading at the time—was more than half loaded—on the 16th of April, 1889.

Q. When did she finish loading?

A. A few days afterwards.

Q. A vessel under the circumstances and of the character asked in the question?

A. Yes, sir.

The COURT. As suggested before, my opinion is that this does not in any way affect the parties to this case. I therefore rule it out from the consideration of the jury as immaterial.

Mr. STIRLING. If your honor please, we ask to have an exception noted.

Which testimony, so offered, the court ruled out and withdrew from the consideration of the jury as immaterial, to which ruling the defendant excepted, which exception was accordingly overruled by the court, and the defendant as herein aforesaid excepted and presented this bill of exceptions to the court and requested the court to sign and seal the same. It is so done by the court this 21st day of December, 1889.

HUGH L. BOND, [SEAL.]
Ct. Judge.
THOS. J. MORRIS, [SEAL.]
Dt. Judge.

Petition and order for writ of error.—Filed March 18th, 1890.

THE U. S.
vs.
HENRY JONES.

In the circuit court of the United States for the district of Maryland.—November term, 1889.

31 To the honorables the judges of said court:

The defendant, Henry Jones, prays the court to order the issue of a writ of error to the Supreme Court of the United States from the final judgment of the court against this respondent sentencing him to suffer death for the murder of Thomas N. Foster, the said judgment being passed upon the conviction of the respondent in the trial had during the same term at which this petition is filed.

HENRY C. JONES.

Witness:
JOHN H. MEYER,
Deputy Warden.

ARCHIBALD STIRLING,
E. J. WARING,
JOSEPH S. DAVIS,
J. EDWARD STIRLING,
Attorneys for Respondent.

Let the writ issue as prayed.

HUGH L. BOND,
Ct. Judge.
THOS. J. MORRIS,
Dt. Judge.

Writ of error.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the district of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States and Henry Jones a manifest error hath happened, to the great damage of the said Henry Jones who was convicted of murder and sentenced to death as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected. the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief-Justice of the said Supreme Court, the 18th day of March, in the year of our Lord one thousand eight hundred and ninety.

[SEAL.] JAMES W. CHEW,
Clerk of the Circuit Court of the United States,
Fourth Circuit, and District of Maryland.

Allowed by

HUGH L. BOND,
Ct. Judge.
THOS. J. MORRIS,
District Judge.

Citation waived.

THOMAS G. HAYES,
U. S. Atty.

33 In pursuance of said writ of error, and according to the statute in such case made and provided, a record of the judgment aforesaid, with all things thereunto relating, together with the said writ of error annexed, is hereby transmitted to the said Supreme Court of the United States accordingly.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, James W. Chew, clerk of the circuit court of the United States for the fourth circuit in and for the district of Maryland, do certify that the aforegoing is a full and true record of the proceedings and judgment in

the said prosecution against the said Henry Jones and others, lately
pending in the said court.

In testimony whereof I hereto set my hand and affix the seal of the
said circuit court on this 27th day of March, A. D. 1890.

[SEAL.]

JAMES W. CHEW,
Clerk of said Circuit Court.

34 (Indorsement on cover:) No. 1597. Henry Jones, plaintiff in
error vs. The United States. Maryland C. C. U. S. Filed April
1, 1890. Supreme Court U. S., clerk's office. Received Mar. 31, 1890.

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